

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1791 OF 2006

IN

REVIEW PETITION NO. 6 OF 1998

IN

APPEAL NO. 519 OF 1986

IN

WRIT PETITION NO. 1763 OF 1981

Mahendra Prasad Tiwari .. Petitioner

V/s

State of Maharashtra & Ors. .. Respondents

Petitioner in person.

Ms.Madhubala Kajale, A.G.P. for Respondents No.1 to 3.

Mr.Raju Moray with Mr.V.S. Khemka and Mr.V.V. Khemka
for Respondents No.4 to 6.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 5TH OCTOBER 2006

P.C. :

1. Heard the Petitioner in person. Ms.Kajale,
A.G.P. appears for Respondents No.1 to 3. Mr.Moray
appears for Respondents No.4 to 6.

2. The notice of motion prays that delay in taking

out this motion be condoned and the order passed by the Prothonotary & Senior Master dismissing the Review Petition (Lodging) No.13 of 1992 on 18th November 1997 be set aside and the Review Petition be heard on merit.

3. Before we deal with the prayers in this motion, we may refer to a few facts leading thereto.

(i) The Petitioner herein joined as a Teacher in the school run by Respondent No.4 Institution on 12th June 1965. He was proceeded in a departmental enquiry for various allegations which led to his termination on 5th September 1981. The Petitioner filed Writ Petition No.1763 of 1981 on 6th October 1981 to challenge this order of termination. It so happened that during the pendency of this petition, the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 ("the Act" for short) came to be implemented from 15th July 1981. In view of the Act having been passed, the learned Single Judge, who was hearing the petition, was of the view that it will be proper that the Petitioner files an Appeal under section 9 of the Act to the Tribunal constituted thereunder. The writ petition was kept pending.

(ii) The Petitioner accordingly filed the Appeal to the Tribunal. This Appeal came to be dismissed on 20th

February 1983. The Petitioner thereafter amended his writ petition and challenged this order of the Tribunal. This amended writ petition came to be dismissed on merits by a Single Judge on 16th April 1986. The Petitioner filed an Appeal against this order of the learned Single Judge being Appeal No.519 of 1986. That Appeal also came to be dismissed on merits by a Division Bench on 17th March 1991. It is thereafter that the Petitioner filed the Review Petition bearing Lodging No.13 of 1991 to seek the review of the order passed by the Appeal Bench. The Review Petition was declared on 14th September 1992 and lodged on 21st September 1992. The Petitioner took out Notice of Motion No.83 of 1993 therein to condone the delay in applying for review which was a delay of over 4 months. This Notice of Motion appeared before a Bench which ordered that the same be placed before the Bench which had disposed of the Appeal.

(iii) It so transpired that there were certain office objections in the Review Petition according to the administration. The same were notified for removal of those objections, but the objections were not removed. Almost after 4 years, i.e. on 18th November 1997, the Review Petition and the motion therein were therefore rejected by Prothonotary & Senior Master by an administrative order passed under Rule 986 of the High

Court (O.S.) Rules for not removing the objections. Though it was an order of rejection, it was a conditional order. It was directed that the objection be removed by 9th December 1997, failing which the Review Petition was to stand rejected. The office of the Prothonotary & Senior Master issued a notice to the Petitioner and his advocate. On 21st November 1997, the Prothonotary & Senior Master is stated to have sent a letter to the Petitioner to remove the objection which can be seen from the office note of the Prothonotary which is annexed to the affidavit in support of the present motion. Inasmuch as necessary steps were not taken, the Review Petition stood rejected on 9th December 1997.

4. It is the case of the Petitioner that he was not aware of any of these developments and he came to know as to what had happened only when his then advocate Mr. Sudhan Amare returned the papers to him along with his forwarding letter dated 8th January 2005. As far as the affidavit in support of the present motion is concerned, the Petitioner is trying to contend that it is only thereafter that he is required to explain the delay. It is his case that on receiving the papers, he made a computer inquiry and on 25th July 2005 he learned that the Review Petition was dismissed by the above conditional order passed way back on 18th November 1997.

It is his further case that for getting a copy of the order and other records, he was advised to apply for search of the record. He applied accordingly and it is thereafter that he got the copy of the order by which the petition was dismissed by order dated 18th November 1997 for not removing the objections. He therefore submits that the delay in moving this motion for setting aside the order of the Prothonotary & Senior Master be condoned and the Review Petition be restored.

5. We have heard Mr.Tiwari by giving him sufficient time since he is a party in person. We must however note that after his termination in the year 1981, he has taken a sanad as an advocate in July 1983. He has tried to explain the entire period from 18th November 1997 until 2005 by stating that he came to know about the order when the papers were returned to him by his advocate.

6. Mr.Moray, learned counsel appearing for Respondents No.4 to 6, submitted that as far as this delay of 2972 days is concerned, unless there is some reasonable explanation, the Court is not expected to record a satisfaction that the delay deserves to be condoned. He referred to us a judgment of the Apex Court in the case of **P.K. Ramachandran v. State of Kerala - JT 1997 (8) S.C. 189**. That was a case of

delay of 565 days and the High Court had condoned the delay by accepting the application for condonation which stated that the Advocate General's office was fed with so many arbitration matters which were equally important and therefore there was delay in filing the concerned proceeding. The Apex Court observed that the High Court had not recorded any satisfaction that the explanation for delay was either reasonable or satisfactory.

7. In the present case, what we have to note is that the Petitioner had followed the matter quite diligently until the appeal was heard and decided and until he filed his review petition which was way back in September 1992. Thereafter it is seen that he has suddenly stopped attending to the matter and that is not a small period. The explanation for the time taken thereafter is that his advocate was attending to the matter as if the party concerned has no responsibility. The responsibility is sought to be cast entirely on the advocate who ultimately returned the papers in January 2005. It is not possible for us to hold only the advocate responsible for the delay and to say that the Petitioner was not in any way responsible at all. The Petitioner has himself become an advocate in the meanwhile in July 1983 and surely it was expected of him at least to inquire and find out as to what was happening to his review petition. Such a gross delay

cannot be explained by simply saying that he was not aware as to what was happening and that his advocate alone was responsible. It is possible that the Petitioner was not following the matter because in the meanwhile he reached the age of superannuation in the school concerned some times in November 1995. Be that as it may, the law will have to be applied uniformly and the application for setting aside the order of the Prothonotary & Senior Master cannot be entertained after such a long lapse of time.

8. Mr.Tiwari contended that there were hardly any objections and the Prothonotary was not right in dismissing the review petition for not removing the objections. The fact remains that such an order was passed by the Prothonotary and there is a procedure to get it set aside and the procedure requires that the application has to be moved within the limitation prescribed. An order until set aside continues to hold the field and therefore we cannot accept this submission of Mr.Tiwari.

9. Before we dispose of the motion, we may record that considering that the Petitioner had put in 16 years of service before he was terminated, we tried to explore the possibility of a settlement. However, the school management did not respond favourably by stating that

its decision was confirmed by the School Tribunal, the learned Single Judge as well as the Division Bench and that they were not agreeable for any modification.

10. For the reasons stated above, we cannot entertain this motion. The same is rejected.

Consequently, the earlier motion, i.e. Notice of Motion No.83 of 1993, will also stand dismissed. There will be no order as to costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)